

**202 KAR 8:030. Procedure for Kentucky Military Heritage nomination, designation, and rescission.**

RELATES TO: KRS 171.782(3), 171.784, 171.786

STATUTORY AUTHORITY: KRS 171.782 (4); 171.784(4), 171.786(3).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.782(4) requires the Kentucky Military Heritage Commission to promulgate administrative regulations necessary to carry out KRS 171.780 to 171.788 and to protect military heritage sites and objects. KRS 171.784(4) requires the commission to promulgate administrative regulations with regard to the process of designation of a military heritage site or object and the characteristics of qualifying sites or objects. KRS 171.786(3) requires the commission to promulgate administrative regulations regarding rescission of a designated military heritage site or object. This administrative regulation establishes the procedure for the nomination, designation, and rescission of military heritage sites and objects.

Section 1. Definitions. (1) "Articles of designation" means the writing by which any estate, interest, or right in a military heritage site is formally designated as provided in KRS 171.782 to 171.786.

(2) "Destroyed" means the physical act of demolishing or tearing down or razing character-defining features or historic landscape components of the designated military heritage site.

(3) "Military heritage" is defined by KRS 171.780(2).

(4) "Military heritage object" is defined by KRS 171.780(4).

(5) "Military heritage site" is defined by KRS 171.780(3).

(6) "Removed" means:

(a) The act of taking or removing the object from the site where it is located at the time of designation; or

(b) Removing character-defining features or historic landscape components from the designated military heritage site.

(7) "Significantly altered" means to be modified, changed, improved, reconstructed, defaced, vandalized, or damaged in any manner that is not considered ordinary repairs, maintenance, or renovations and is inconsistent with the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 C.F.R. 68.

(8) "Sold" means the transfer, sale, gift, donation, or exchange of ownership by agreement with or physical conveyance to a person or entity other than the owner at the time of designation.

(9) "Temporary loan" means the loan of a designated military heritage object to a person or entity other than the owner at the time of designation for a period not to exceed one (1) year.

Section 2. Nomination Process. (1) A person or organization may nominate a geographic location for designation as a military heritage site or an object as a military heritage object by submitting a "Military Heritage Commission Historic Military Sites and Objects Application for Registration" form to the Historic Military Sites Preservation Coordinator at the Kentucky Heritage Council.

(2) The "Military Heritage Commission Historic Military Sites and Objects Application for Registration" form shall contain the following information:

(a) Name of property;

(b) Location;

(c) Ownership and category of site or object;

(d) Owner or location contact information;

- (e) Information regarding site acreage and physical location;
- (f) Brief description of site or object;
- (g) Significance of historical site or object;
- (h) Other documentation or recognition;
- (i) Condition of site or object;
- (j) Supporting documentation;
- (k) Photograph log; and
- (l) Owner consent.

(3) At least sixty (60) days prior to a biennial commission meeting, a completed registration application form shall be submitted to the Historic Military Sites Preservation Coordinator for staff review prior to submission to the full commission at the meeting. In determining qualification of the object or site for nomination, the commission shall consider the following characteristics:

- (a) Whether the object or site:
    - 1. Has a degree of connection to a military event or activity associated with military heritage;
    - 2. Has relevance specifically to a military heritage event or activity as opposed to only an association with the lives of persons significant to the activity;
    - 3. Possesses a distinctive feature of type, period, or method of construction germane to a military event or activity associated with military heritage;
    - 4. Represents the work of a master or possessing high artistic values that memorializes a military event or activity of military heritage;
    - 5. Is commemorative of a military event or activity associated with military heritage; and
    - 6. Retains its integrity;
  - (b) The age of the object or site; and
  - (c) The authenticity of the object or site for consideration at one (1) of the regularly scheduled meetings.
- (4) Prior to the biennial commission meeting, a staff reviewer shall:
- (a) Review the application;
  - (b) Verify the accuracy and completeness of the application;
  - (c) Send copies of the application form to each commission member; and
  - (d) Make recommendations to the commission for approval or disapproval of the nominated site or object.
- (5) The commission shall not consider incomplete applications. If an application is incomplete, review staff shall contact the applicant within five (5) working days of receipt of the application to request additional information or offer assistance in drafting the application so that it can be submitted to the commission for consideration.
- (6) Within five (5) working days of receipt of the completed application, review staff shall determine whether a site or object is publicly or privately owned.
- (7) If private property is nominated by someone other than the owner, review staff shall:
- (a) Immediately notify the owner of the property or object of the receipt of the application by the commission; and
  - (b) Inform the owner that the application shall not be approved without the owner's written approval in accordance with KRS 171.784(3)(b).
- (8) If public property is nominated by someone other than the owner, review staff shall:
- (a) Immediately notify the owner of the property or object of the receipt of the application by the commission; and
  - (b) Inform the owner that he may submit a written agreement with, or objection to, the application.
- (9) If the commission designates a site or object as a military heritage site or military herit-

age object, the Historic Military Sites Preservation Coordinator of the Kentucky Heritage Council shall, within thirty (30) days, forward official notification to the owner of record, outlining permitted and forbidden activities relating to designated military heritage sites and objects and which management activities require written permission of the commission, in accordance with KRS 171.786 and 171.788. At that time articles of designation shall be enacted and a certificate of listing to the Kentucky Military Heritage Sites and Objects Register shall be forwarded to the owner of record.

Section 3. Articles of Designation. (1) Upon the determination by the commission that an area be designated a military heritage site, the military heritage site shall be so designated upon acceptance of articles of designation by the commission.

(2) Articles of designation shall be recorded in the:

- (a) Office of the county clerk of the county in which the military heritage site is located;
- (b) Office of the secretary of state; and
- (c) Office of the commission.

(3) Articles of designation shall be used as the guideline for the management of each designated military heritage site. The management, use, development, and public access of each military heritage site shall be in accordance with 36 C.F.R. 68 and the provisions set forth in the articles of designation.

(4) Articles of designation may contain:

(a) Restrictions relating to:

- 1. Management;
- 2. Use;
- 3. Development;
- 4. Transfer; and
- 5. Public access; and

(b) Provisions necessary to further the purposes of the Military Heritage Act, KRS 171.780 to 171.788.

(5) Articles of designation may vary from one (1) military heritage site to another because of:

- (a) Differences in the characteristics and conditions of the area involved; or
- (b) Reasons found necessary by the:
  - 1. Commission; and

2. Landowner, grantor, deviser, or donor.;

(6) Articles of designation may include:

(a) An agreement by the landowner to:

- 1. Give notice to the commission of any change in ownership; or
- 2. Allow limited public access; or

(b) Voluntary management agreements designed to protect the cultural and historic features of the military heritage site.

(7) Articles of designation may be amended by the commission upon a finding that the amendment will not permit an impairment, disturbance, use, or development of the military heritage site inconsistent with the purposes for which the site was designated or inconsistent with the Military Heritage Act, KRS 171.780 to 171.788.

Section 4. Recession Process. (1) Any person or organization may apply to the Kentucky Military Heritage Commission to request the rescission of the designation of a site as a military heritage site or an object as a military heritage object.

(a) This request shall be made by contacting the Historic Military Sites Preservation Coordinator at the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, in

writing and detailing why the continued designation of an individual site or object should no longer be in effect.

(b) An applicant shall clearly demonstrate:

1. That a site or object was erroneously listed; or
2. Other mitigating issues require the removal of the site or object from the Kentucky Military Heritage Sites and Objects Register.

(2)(a) Within ten (10) days of receipt of the request, the Kentucky Military Heritage Commission staff shall confirm receipt of the request to the applicant and inform him of the approximate date, time and location of the meeting at which the commission is expected to consider the matter.

(b) Kentucky Military Heritage Commission staff:

1. May request further information from any parties, regarding the request, site or object in question, to assist the Commission in its deliberations; and
2. Staff shall notify the applicant and the owner of the property in writing at least fourteen (14) days prior to the meeting of the commission of the exact date, time and location of the meeting.

(c) The applicant, with the permission of the commission, may offer oral testimony in addition to the written request prior to the commission's vote on the matter.

(d) The commission may also hear testimony from other interested parties prior to making its decision.

(3)(a) Letters requesting rescission of designation shall be presented to the commission for action during their next meeting.

(b) The commission shall review each request for rescission of designation as well as staff recommendations of that request and may request further information or investigation prior to the vote or may vote on the matter as presented.

(4)(a) If the commission fails to rescind a designation in accordance with KRS 171.784(7), it may be brought before the commission again at a later meeting to consider new and material information regarding the request.

(b) A request for reconsideration shall require the applicant to submit a new written request for the rehearing.

(c) The commission may, consider the new and material information provided in the written request for a rehearing and staff review and may at the discretion of the chairman in consultation with the secretary, deny the request for a rehearing if they feel that the evidence is not new and material and therefore not substantially different from the information considered at the first hearing for rescission.

(5) Upon rescission of the designation of a site as a military heritage site or object by the commission:

(a) Notification shall be sent to the owner and applicant; and

(b) A notation of rescission shall be recorded in the Register Of Military Heritage Sites and Objects maintained by the Kentucky Heritage Council; and

(c) Articles of rescission of designation shall be recorded in the:

1. Office of the county clerk of the county in which the military heritage site is located;
2. Office of the secretary of state; and
3. Office of the commission.

Section 5. Incorporation by Reference. (1) "Military Heritage Commission Historic Military Sites and Objects Application for Registration," KMHC Form #1, (2/12/03 edition), Kentucky Military Heritage Commission, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law,

at the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 1147; Am. 1503; eff. 1-5-2004.)